

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
CIVIL ACTION NO. 1:20-CV-00316-GCM**

ELIZABETH DAWSON,

Plaintiff,

v.

KILOLO KIJAKAZI,

Defendant.

ORDER

THIS MATTER comes before the Court on its own motion. The parties filed cross-motions for summary judgment (ECF No. 12, 14). In a reply brief (ECF No. 16), Plaintiff argued for the first time that this case should be stayed pending briefing on the constitutionality of the Commissioner's decision. Plaintiff cites an advisory opinion by the White House Office of Legal Counsel which concluded that the Social Security Commissioner's tenure protections were unconstitutional in light of *Collins v. Yellen*, 131 S. Ct. 1761 (2021). *See* Constitutionality of the Commissioner of Social Security's Tenure Protection, 45 Op. O.L.C._ (2021).

The Court seeks additional briefing on the issue. In addition to the constitutional question presented by the Plaintiff, the Court directs the parties to brief whether the Plaintiff's argument has been forfeited or waived, either by failure to raise the challenge before the Commissioner, or by raising the issue in the first instance in a reply brief. *See Jackson v. Berryhill*, Civil Action No. 1:18-cv-00003-RJC, 2019 WL 1332377, at *3 (W.D.N.C. Mar. 25, 2019); *Goodman v. Praxair Servs.*, 632 F. Supp. 2d 494, 512 n.8 (D. Md. 2009).

The parties should submit additional briefing in the form of letter memoranda, not to exceed three single-spaced pages. The Court does not request responsive pleadings, but if the

parties so desire, a two-paged, single-space reply may be made within seven (7) days of the other party's memorandum.

IT IS THEREFORE ORDERED that the parties shall submit additional briefing on the issues discussed above up to and including October 21, 2021.

SO ORDERED.

Signed: September 30, 2021

A handwritten signature in black ink, reading "Graham C. Mullen", written over a horizontal line.

Graham C. Mullen
United States District Judge

